



NEBRASKA

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TO: State Board of Education

FROM: Scott Summers, Legal Counsel III, Commissioner's Appointed Staff Person to Conduct Consecutive Rule Hearings on the **REPEAL** of Title 92, Nebraska Administrative Code, Chapter 12, *Regulations and Procedures for Exempting Schools for Which parents Elect Not to Meet Legal Requirements for School Approval and Accreditation for Other than Religious Reasons*

AND

REVISIONS to Title 92, Nebraska Administrative Code, Chapter 13, *Regulations and Procedures for Exempting Schools for Which parents Elect Not to Meet Legal Requirements for School Approval and Accreditation*

DATE: January 20, 2016

RE: Summary of consecutive rule-making hearings on proposed REPEAL of 92 NAC 12 and the proposed REVISIONS to 92 NAC 13

On December 14, 2015, the Commissioner approved hearing drafts, set a hearing date and location, and designated a staff person to conduct consecutive rulemaking hearings on the adoption of proposed revisions to Title 92, Nebraska Administrative Code, Chapter 13 AND the REPEAL of Title 92, Nebraska Administrative Code, Chapter 12.

By a memorandum dated December 18, 2015, the Commissioner appointed me to conduct these hearings on January 20, 2016, commencing at 9:00 a.m.(CT). After the proper legal notice was published, the hearing was held at the Nebraska State Office Building, Lower Level Conference Room D, 301 Centennial Mall South, Lincoln, Nebraska. Pursuant to State Board of Education Policy B9, what follows is a written summary of the hearing testimony.

An audio recording of the hearing is available if any members of the Board wish to hear it.

SUMMARY OF TESTIMONY ON THE PROPOSED REPEAL OF 92 NAC 12

Regulations and Procedures for Exempting Schools for Which parents Elect Not to Meet Legal Requirements for School Approval and Accreditation for Other than Religious Reasons

Scott Summers, staff attorney and the hearing official, called the hearing to order, read into the record the name of the newspaper in which a legal notice of the hearing was published and the date the notice appeared, and outlined the procedures for the hearing. Mr. Summers introduced **Mr. Bryce Wilson, Director**, School Finance & Organizational Services, Nebraska Department of Education.

Mr. Wilson introduced and explained the proposed REPEAL of Title 92, Nebraska Administrative Code, Chapter 12. Mr. Wilson testified that NDE is proposing that Rule 12 be completely repealed and combined into Rule 13.

No other written or oral testimony was received.

**SUMMARY OF TESTIMONY ON THE PROPOSED REVISIONS TO
92 NAC 13
Regulations and Procedures for Exempting Schools for Which parents Elect Not to Meet
Legal Requirements for School Approval and Accreditation**

Scott Summers, staff attorney and the hearing official, called the hearing to order, read into the record the name of the newspaper in which a legal notice of the hearing was published and the date the notice appeared, and outlined the procedures for the hearing. Mr. Summers introduced **Mr. Bryce Wilson, Director**, School Finance & Organizational Services, Nebraska Department of Education.

Mr. Wilson testified that these proposed revisions to Rule 13 comes after much work and collaboration with the Nebraska Christian Home Education Association (NCHEA) and other stakeholders. NDE would like to thank everyone involved for their assistance.

Mr. Wilson introduced and explained the proposed revisions to Title 92, Nebraska Administrative Code, Chapter 13. The proposed revisions include:

- ▶ Combining Rules 12 and 13 into one Rule, Rule 13;
- ▶ Adding the term “legal” before guardian throughout the Rule to align with statutory language;
- ▶ Added the definition of “Initial year of operation” to clarify for first year filers obligations;
- ▶ Added the definition of “residence” and “resident” to the Rule;
- ▶ “Promptly” is being used for clarifying the time for parents to file forms for the first time with NDE;
- ▶ Changing the filing date for new filers to July 15 annually with provisions for families who move into the State after that date or who wish to transfer their children from an approved or accredited school to an exempt school mid-school year;
- ▶ Streamlining the Parent Representative Form B to eliminate redundancy;
- ▶ For the initial year of operation we are providing an additional 30 days to file the information summaries;
- ▶ Other proposed revisions to Section 004 to clarify deadlines and streamline information to be reported;
- ▶ Removed Sections 011 and 012 in Rules 12 and 13 and moved to Section 001 General Information in the proposed Rule 13;
- ▶ The requirements for forms in the Appendices to be sworn under oath before a Notary Public are being eliminated throughout the Rule, where statute permits, so as to reduce the burden on parents as well as revising Appendices A, B, C, and D to be more user friendly; and,
- ▶ Making other non-substantive changes to align with current practices.

David Lostroh, Director and Legislative Liaison for the Nebraska Christian Home Educators Associatoin (NCHEA). Mr. Lostroh testified in favor of the NDE Rule 12 Hearing Draft and Rule 13 Hearing Draft. After two years of dialog with the NDE the NCHEA is convinced that the proposed hearing drafts can work well for homeschool families. NCHEA agrees the proposed incorporation of Rule 12 into Rule 13 is done in such a manner as to retain all the critical language for both religious and non-religious homeschooling; parents can simply select which one they want on the election forms. Mr. Lostroh testified that the novel improvements to ease initial filing exemption notices to NDE by allowing up to 30 days to provide Section 004 information AND clarifies that continued effectiveness is contingent on the receipt of the information required in Section 004 is very helpful and really appreciate the NDE working on that. Mr. Lostroh thanked NDE and specific NDE employees for allowing NCHEA the opportunity to supply draft input on these valuable improvements that the homeschooling community will embrace. Please see Mr. Lostroh's written testimony attached.

Kathryn Dillow, Board Member of the Home Educators Network (HEN) in Omaha and serves as the Nebraska State Ambassador for the Home School Foundation. Ms. Dillow testified in favor of the proposed changes to Rules 12 and 13, stating that combining Rules 12 and 13 makes sense. Ms. Dillow testified that she felt that the current rules were over-bearing or ineffectively written, causing confusion for some who may elect to operate exempt schools, and possibly confusing some school officials or local authorities as well. Ms. Dillow encouraged local authorities to leave the interpretation of the term "promptly" to the Exempt School Program and the parents/legal guardian. Please see Ms. Dillow's written testimony attached.

Ms. Dillow read into the record an email she had received from **Mariel Barreras, Executive Director, Home School Association for Military Families (HSAMF)**: "The Home School Association for Military Families appreciates the efforts of the Nebraska Department of Education and the Home Educators Network (HEN) for the positive changes to Nebraska's Exempt School Rules 2016. These changes will allow for a more favorable transition to Nebraska, for military families choosing to homeschool."

No other oral or written testimony was received.

NCHEA TESTIMONY ON NDE RULE 12 & RULE 13 HEARING DRAFTS 12/14/2015

My name is David Lostroh. I am a Director and Legislative Liaison for the Nebraska Christian Home Educators Association (NCHEA). I am here on behalf of the NCHEA to testify in favor of the NDE RULE 12 HEARING DRAFT 12/14/2015 and RULE 13 HEARING DRAFT 12/14/2015.

After two years of dialog with the Nebraska Department of Education (NDE), the NCHEA is convinced that the 12/14/15 NDE hearing draft rules can work well for homeschool families.

The NDE RULE 13 HEARING DRAFT 12/14/2015 has features that include:

- Incorporation of Rule 12 into Rule 13 in such a manner as to retain all the critical language for both religious and non-religious homeschooling; parents simply select which one they want on the election forms. Rule 12 will be repealed with the approval of the new Rule 13.
- Forms that are clearer on who and what is needed.
- Clarification that the election for exempt status is effective when the Commissioner receives the election notice (forms, required information, etc.)
- Novel improvements to ease initial filing exemption notices to NDE by allowing up to 30 days to provide the Section 004 information AND clarifies that continued effectiveness is contingent on the receipt of the information required in Section 004.
- Provides suitable clarity regarding filing under various situations that homeschool parents routinely face. This will substantially reduce confusion among homeschool parents.

The NCHEA urges the Nebraska State Board of Education to approve the Rule 12 and Rule 13 hearing drafts as proposed and to forward them for approval to the Attorney General's Office and Governor's Office.

We want to thank the Nebraska Department of Education¹ for providing opportunities for the NCHEA and other homeschool representatives to supply draft input on many occasions, for providing many opportunities for face-to-face review of NDE drafts and homeschool leaders drafts/input, then using NDE review and creativity to generate the 12/14/15 hearing drafts. These are versions that provide many valuable improvements that we believe the homeschooling community will embrace.

¹ The NCHEA thanks NDE participants Assistant Commissioner & General Counsel Brian Halstead, Staff Attorney Scott Summers, Finance & Organizational Services (FOS) Director Bryce Wilson, Program Associate Beth Bolte, and Office Associate Micki Iverson.

NDE Hearing Comments 20 Jan 16: Kathryn Dillow

Good morning.

My name is Kathryn Dillow. It is spelled K-A-T-H-R-Y-N, D-I-L-L-O-W. I serve on the board of the Home Educators Network (HEN) in Omaha, I am the Nebraska State Ambassador for the Home School Foundation, and I am an active member in several homeschool associations.

I'm speaking today in favor of the proposed changes to Title 92, Nebraska Administrative Code, Chapters 12 & 13. As a second generation homeschooler, not only have I seen the administrative requirements my parents had to meet, but I also experienced it first-hand when homeschooling my own children in three different states as I moved with the military. I've learned that administrative rules can at times hinder the very process they were designed to help. This could be due to the rules being over-bearing or ineffectively written. I find the current Nebraska rules lean toward the latter—causing confusion for some who may elect to operate exempt schools, and possibly confusing some school officials or local authorities as well. This very fact was evidenced by the Thacker cases of 2013. Rules 12 & 13 need clarity. Through the collaborative efforts of the Nebraska Department of Education and the exempt school community, we have attempted to address this need.

Open dialogue has allowed us to understand the needs of the stakeholders and respond with a proposed rule that effectively addresses exempt school start-up

within the context of a variety of situations: first-time filers, renewing exempt schools, mid-year starters, and new residents, to include families that move into the state after the start of the public school calendar. Addressing this last one was of particular importance to me as a military retiree moving back into the state in the midst of the Thacker cases.

In as much as parents and legal guardians have the primary responsibility of ensuring that their children receive the best education possible, these proposed changes and the streamlined documentation requirements honor parental authority and responsibility while respecting school choice, all the while remaining sensitive to the needs of administering the Exempt School Program.

Of particular note are the clarified timelines for when documentation is to be filed; there is also allowance for situations when school choice may change after the designated filing date. Additionally, removing notary requirements where allowed will make it easier for parents to file the required documents.

Defining an “Initial Year of Operation” and the associated allowances for providing supplementary documentation ensures students in exempt schools can begin schooling without delay. It also gives Parent Representatives an appropriate amount of time to develop an optimal educational plan based on the unique needs of the individual student.

The use of the term “promptly” serves to deliver a win-win scenario to the Exempt School Program and to individual families, allowing the Exempt School

Program to exercise discretion as they work with each family. I would like to highlight that the parents or legal guardians who file an election with the Exempt School Program are accountable to that program and not to their local school districts. It is upon the Exempt School Program and those parents/legal guardians to offer clarity to the definition of the term “promptly”—knowing full-well that it is a relative term based on the surrounding circumstances. School officials and local authorities do not have role in assigning a definition to the term “promptly” within the context of this rule. I say this with confidence since it is the Exempt School Program that provides the acknowledgment of the election and not the school officials or local authorities. Thus, I encourage local authorities to leave the interpretation of the term “promptly” to the Exempt School Program and the parents/legal guardian. I feel this would help reinforce the required channels of communication and serve to promote amicable relationships between individual families, schools and local authorities, and the Exempt School Program Office.

Lastly, combining Rules 12 & 13 makes sense. The current rules are essentially the same with the exception of the “reason” for election and the immunization requirements. These exceptions have been effectively crafted into the proposed changes without compromise.

I thank you for the opportunity to comment and encourage the adoption of the proposed changes. I’d be happy to answer any questions that you may have.
